

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT**

**Vincent F. Rivera,
Plaintiff**

v.

**James H. Douglas,
Patrick Leahy, and Vermont
Department of Corrections,
Defendants**

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File No. 1:06-CV-165

ORDER

The Magistrate Judge's Report and Recommendation was filed August 25, 2006 (Paper 3). After de novo review and over objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1). Plaintiff's motion to proceed *in forma pauperis* (Paper 1) is DENIED. This case is DISMISSED without prejudice, subject to refiling only upon the full payment of the filing fee.

Pursuant to Fed. R. App. P. 22(b), the Court DENIES petitioner a certificate of appealability ("COA") because the petitioner failed to make a substantial showing of a denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). In addition, because the petition has been dismissed on procedural grounds, the petitioner cannot be issued a COA due to his failure to demonstrate that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." See Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 1604 (2000).

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 15th day of September, 2006.

/s/ J. Garvan Murtha

J. Garvan Murtha
United States District Judge